

## NEEDLE &amp; ROSENBERG

## IMPORTANT FAX DOCUMENT

DATE March 13, 2003  
NAME Examiner Richard G. Hutson, Ph.D.  
COMPANY United States Patent and Trademark Office  
Art Unit 1652  
FAX NUMBER 703-305-3014

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GROUP 1600

FROM Tina W. McKeon, Ph.D.  
REFERENCE NO. 06027.0001U3 Application No. 10/042,991  
Confirmation No. 7697  
OUR FAX NUMBER 404-688-9880  
NUMBER OF PAGES 7

OFFICIAL

Attached are: Election Under Restriction/Election Requirement (3 pages)  
Request for Extension of Time (2 pages)  
Form PTO-2038 (1 page)

## CONFIDENTIALITY NOTE

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**ATTORNEY DOCKET NO. 06027.0001U3  
PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	)	
WHITEHEAD et al.	)	
Serial No.: 10/042,991	)	Group Art Unit: 1652
Filed: January 9, 2002	)	Confirmation No. 7697
For: "Guava (Psidium guajava) 13-Hydroperoxide Lyase and Uses Thereof"	)	Examiner: Hutson, Richard G.

#6  
M9J  
3/20/03**ELECTION UNDER RESTRICTION/ELECTION REQUIREMENT****VIA FACSIMILE**

703-305-3014

Attn: Examiner Richard Hutson, Ph.D.

Group Art Unit 1652

U.S. Patent and Trademark Office

Washington DC 20231

NEEDLE &amp; ROSENBERG, P.C

The Candler Building

127 Peachtree Street, N.E

Atlanta, Georgia 30303-1811

March 13, 2003

Sir:

In response to the restriction/election requirement of February 11, 2003, applicants provisionally elect, with traverse, the claims of Group I (claims 1, 3, 4, 6, 7, 9, 10, 12, 13, and 15) and provisionally elect, with traverse, the amino acid species corresponding to SEQ ID NO:1 (claims 1-3).

Although applicants provisionally elect Group I with traverse, applicants request that the restriction requirement be reconsidered because the Examiner has not shown that a serious burden results if all the claims are examined together. M.P.E.P. § 803 provides that "[i]f the search and examination of an entire application can be made without serious burden, the

Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." (Emphasis added.) Thus, for a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions and (2) the search and examination of the entire application cannot be made without serious burden. See M.P.E.P. § 803. The Examiner has not shown that the second requirement has been met. Specifically, the Examiner has not shown that it would be a serious burden to search and examine both groups together. This is particularly true as Groups I and II are in the same class and subclass and can readily be searched together. Because little or no additional burden would be required to search and examine the groups together, applicants respectfully submit that the Office should search and examine the groups together. Indeed it would be most efficient for the Patent Office to keep them together. Consequently, reconsideration and withdrawal of the restriction is requested.

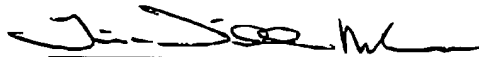
Although Applicants provisionally elect SEQ ID NO:1, Applicants traverse the election of species requirement. As discussed in the 37 C.F.R. § 1.141(a), an application may claim a reasonable number of species within a claimed genus as long as at least one genus claim encompassing all of the species is patentable. In the present claims, there are reasonable numbers of species claimed. Five overlapping sequences, SEQ ID NOS:1-3, 6, and 6, are claimed. Applicants should not be required in the present application to elect a species when applicants have not claimed an unreasonable number of species. Applicants thus respectfully request reconsideration of the election requirement. Applicants also point out that the amino acid sequence of SEQ ID NO:1 is present in each of the additional claimed amino acid sequences (i.e., in SEQ ID NOS:2-3, 4, and 6). As the sequences are overlapping, it is not unreasonable to search several species of amino acid sequences. Applicants also respectfully remind the

Examiner that, should a broad claim (e.g., a claim that relates to SEQ ID NO:1) be found allowable, the search should be expanded to include additional species.

For the above reasons, reconsideration or withdrawal of the restriction requirement and a favorable consideration of the claims are requested.

Payment in the amount of \$110.00 for a one-month Request for Extension of Time submitted herewith is to be charged to a credit card and such payment is authorized by the signed, enclosed document entitled: Credit Card Payment Form PTO-2038. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required to Deposit Account No. 14-0629.

Respectfully submitted,



Tina Williams McKeon  
Registration No. 43,791

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence and anything indicated as included is being transmitted via Facsimile No. 703-305-3014 addressed to:  
Attn: Examiner Richard G. Hutson, Ph.D., Group Art Unit 1652, U.S. Patent and Trademark Office, on the date shown below.



Tina Williams McKeon

March 13, 2003

Date